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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JOSEPH CHURCH,**

**Plaintiff,**

**v.**

**CITY OF CLEVELAND, et al.,**

**Defendants.**

**) CASE NO. 1:10 CV 1399**

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**) JUDGE DONALD C. NUGENT**

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**) Magistrate Judge Nancy A. Vecchiarelli**

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**MEMORANDUM OPINION**

**This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Nancy A. Vecchiarelli (Docket #17), recommending that the Motion for Partial Dismissal filed by Defendants, the City of Cleveland and Sergeant Mishic, (Docket #5) be granted in part and denied in part.**

Plaintiff's claims stem from Sergeant Mishic's refusal to return Plaintiff's gun following an investigation by the City of Cleveland Police Department. Count One of the Complaint alleges conversion as to both the City of Cleveland and Sergeant Mishic. Count Two of the Complaint sets forth a claim under 42 U.S.C. § 1983, but does not name the City of Cleveland as a defendant.

The Magistrate Judge recommends that Plaintiff's conversion claim against the City of Cleveland be dismissed on the basis of immunity; that Plaintiff's conversion claim against

Sergeant Mishic be denied because Plaintiff pleaded enough facts to make his conversion claim against Mishic plausible on its face; and, that Plaintiff's claim against the City of Cleveland pursuant to 42 U.S.C. § 1983 be dismissed because Plaintiff alleges that Mishic, not the City of Cleveland, deprived him of his Constitutional rights and there is no allegation that the alleged deprivation of Plaintiff's rights was the result of a policy or custom of the City of Cleveland.

No objections were filed to the Report and Recommendation. A status conference was held before Judge Nugent on November 15, 2010.

#### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not


appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

### **Conclusion**

This Court carefully reviewed the Magistrate Judge's Report and Recommendation. The Magistrate Judge thoroughly and exhaustively examined the Complaint; Defendants' Motion for Partial Dismissal; and, Plaintiff's opposition thereto. The Court hereby agrees with and adopts the findings of the Magistrate Judge as its own.

The Report and Recommendation issued by Magistrate Judge Vecchiarelli (Document # 17) is hereby ADOPTED. Defendants' Motion for Partial Dismissal of the Complaint (Docket #5) is hereby GRANTED IN PART and DENIED IN PART, for the reasons articulated in the Report and Recommendation. This case remains referred to Magistrate Judge Vecchiarelli for pretrial supervision.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
United States District Judge

DATED: November 23, 2010